

REMARKS

Applicant's attorney wishes to thank Examiners Kishore and Sheikh for the personal interview on February 24, 2004.

As suggested by the Examiners, the claims have been amended to use the term "consisting essentially of" instead of "comprising" to further distinguish over the Sundstrom et al reference.

With respect to the use of term "microbial" in the claims, this term has not been further limited since it is Applicants' contention that the present invention will work (at least to some beneficial degree) for all types of microbes. On page 10 of the specification, yeast and bacteria are disclosed. On page 16, Example 1, effectiveness against bacteria (greater than 4 organisms) is proven. In Example 2, effectiveness against an unknown infectious agent or agents is shown. In Example 3, effectiveness against irritable bowel syndrome is shown. In Example 4, effectiveness against bacterial vaginosis is shown.

Concerning the claims that read on prevention in addition to treatment, prevention is asserted throughout the specification. See e.g. page 1, line 28-page 2, line 2; page 5, line 8; page 6, lines 19-20; page 9, line 7, page 10, lines 1-2 and 19-20; page 11, lines 16-18; page 12, lines 13-14 and 16-18; etc.

Also, the Examiner's concern with the breadth of the claims would seem to be a section 112 rejection on enablement. However, as pointed out by the court in In re Marzocchi, 439 F.2d 220, 169 USPQ 367 (CCPA 1971), a specification disclosure which contains a teaching of the manner and process of making and using the invention in terms which correspond in scope to those used in describing and defining the subject matter

sought to be patented must be taken as in compliance with the enabling requirement of the first paragraph of § 112 unless there is reason to doubt the objective truth of the statements contained therein which must be relied on for enabling support. How such a teaching is set forth, either by the use of illustrative examples or by broad terminology is of no importance. There is no dispute here that the present claims find literal support in the specification.

It is respectfully submitted that in rejecting the claims under 35 U.S.C.112, the Examiner is charged with the initial burden of providing a basis upon which to support the conclusion that one having ordinary skill in the art would not have been able to ascertain the scope of protection defined by the claims, when reasonably interpreted in light of the specification. See In re Moore 439 F.2d 1232, 169 USPQ 236 (CCPA 1971); In re Hammock, 427 F.2d 1378, 166 USPQ 204 (CCPA 1970). The resolution of this legal question necessarily depends upon the facts of each particular case. Smithkline Diagnostics, Inc. v Helena Laboratories Corp.; 859 F.2d 878, 8 USPQ2d 1987; Chicago Pneumatic Tool Co. v. Hughes Tool Co.; 97 F.2d 945, 38 USPQ 258(10th Cir. 1938).

In the present application, it is respectfully contended that it is not apparent why one having ordinary skill in the art would not have been able to ascertain the scope of protection defined by the claims when reasonably interpreted in light of the supporting specification.

It is also respectfully submitted that there is no "reason to doubt the objective truth of the statements contained" in the specification and claims, particularly since blocking the surface of eukaryotic cells will necessarily prevent or at least limit the surface area available for attachment for all pathogenic microorganisms.

In view of the amendments to the claims and the above discussion, it is believed that all of the claims 1-40 are patentable over the cited art and are otherwise in condition for allowance. Allowance thereof is respectfully submitted.

Respectfully submitted,

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